

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

NIGEL J. SCOTT,)
vs. Petitioner,) NO. CIV-10-178-D
vs.)
GREG PROVINCE, Warden,)
Respondent.)

O R D E R

Before the Court is the Petitioner's request [Doc. No. 19] for a certificate of appealability and an order granting him leave to proceed *in forma pauperis* in connection with his appeal of this Court's June 25, 2010 Order [Doc. No. 17] and Judgment [Doc. No. 18] denying his petition for habeas relief.¹

To obtain a certificate of appealability, Petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). He must also show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U. S. 322, 349 (2003)(citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)); *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). The Court concludes that, with respect to the claims he asserts, Petitioner has failed to show that reasonable jurists would find the decisions at issue debatable or wrong.

To proceed *in forma pauperis* on appeal, Petitioner must show that the appeal is taken in good faith and that he lacks the financial ability to pay the required fees. See *McIntosh v. United States Parole Comm'n*, 115 F. 3d 809, 812 (10th Cir. 1997); 28 U.S.C. §1915(a)(1) and (a)(3). A good faith appeal requires the presentation of a "reasoned, nonfrivolous argument on the law and

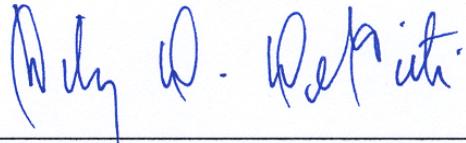
¹Defendant has not yet filed a Notice of Appeal.

facts in support of the issues raised on appeal.” *Caravalho v. Pugh*, 177 F. 3d 1177, 1179 (10th Cir.1999); *McIntosh*, 115 F. 3d at 812.

Petitioner has not submitted information necessary to determine his financial status, and the Court cannot conclude that he is unable to pay the required filing fee. Even if he had done so, however, he must also present a good faith basis for his appeal. Having reviewed the record, including the Report and Recommendation adopted in the Court’s June 25, 2010 Order, the Court concludes that Petitioner cannot present a good faith basis for his appeal. Accordingly, his request to proceed *in forma pauperis* must be denied.

For the foregoing reasons, Petitioner’s request for a certificate of appealability and for leave to proceed *in forma pauperis* on appeal [Doc. No. 19] is DENIED.

IT IS SO ORDERED this 14th day of July, 2010.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE